

Matthew Kurilich California Bar Number 30172  
17321 Irvine BLVD STE 115  
Tustin CA 92780  
Telephone 714-734-3715  
Facsimile 714-734-3716  
mattkurilich@gmail.com

Attorney for Objector  
Larry Ellis

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

FELTON A. SPEARS, JR. and SIDNEY  
SCHOLL, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

FIRST AMERICAN EAPPRAISEIT  
(a/k/a eAppraiseIT, LLC), a Delaware  
limited liability company,

Defendant.

Case No. 5-08-CV-00868 (RMW)

**NOTICE OF OBJECTION FOR  
OBJECTOR LARRY ELLIS**

TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR  
ATTORNEYS OF RECORD:

Class member, LARRY ELLIS, obtained a loan from Washington Mutual on or  
after June 1, 2006 and the loan number is 139588404 dated July 7, 2006. My address  
is 2040 Laguna #402 San Francisco CA 94115 and my telephone number is 415-517-  
2197. I have not appeared as an objector and although I don't understand why it is

1 relevant my attorney represented an objector in Google 5:10-cv-4809 (EJD); Hyundai  
 2 MDL 2:13-ml-2424 and Nader CV-12-01265.

### 3 4 I. DEFECTIVE CLAIMS PROCESS

5  
6 The settlement is unfair, unreasonable, and inadequate because it discriminates  
 7 between Class Members and creates interclass conflict. Under the Settlement, Class  
 8 Members who submit Claim Forms affirming they paid their appraisal fee will each  
 9 receive treble relief (about \$181). Those who do not submit a Claim Form will receive  
 10 about \$60 each. The Claim Form, however, does not request any special information  
 11 beyond the claimant's name, address, and signature. It does not request information  
 12 regarding the Claimant's mortgage, the appraisal, or how much the Claimant was  
 13 charged for the appraisal. The settlement arbitrarily creates an unwarranted and  
 14 unauthorized distinction between Class Members. The Class is defined as, "All  
 15 consumers throughout the United States who, on or after June 1, 2006, received home  
 16 loans for personal, as opposed to business or commercial purposes, originated by  
 17 Washington Mutual Bank, F.A., utilizing appraisals that they paid for and obtained  
 18 from defendant eAppraiseIT" (see Court's Order dated September 16, 2014 (Dkt. No.  
 19 438)). Thus, all Class Members are equally defined, there is no distinction between  
 20 Class Members. Each Class Member obtained and paid for an appraisal by  
 21 Defendant. A Class Member should not receive triple benefits simply because he or  
 22 she submits a Claim Form. Based on the claims submitted to date, a minority of  
 23 around 4% of Class Members will receive triple benefits, totaling nearly half a million  
 24 dollars. It is unfair and unreasonable to create an artificial distinction and provide a  
 25 windfall to a minority of Class Members at the expense of the majority. Class  
 26 Members should receive equal compensation. Equal compensation would, at a  
 27 minimum, increase Class Members payouts by \$5, a 9% increase.  
 28

1 Even if there were a reasonable distinction between Class Members, which  
2 there is not, the Settlement Administrator presumably knows which Class Members  
3 are eligible for treble benefits. Because the Administrator is already automatically  
4 paying Class Members (whether or not they submit Claim Forms), the Administrator  
5 should automatically distribute treble benefits to all eligible Class Members.  
6

## 7 II. CY PRES 8

9 The settlement agreement also is inadequate because it does not provide for  
10 how unclaimed and/or remaining settlement funds will be distributed. Typically, a  
11 specific cy pres recipient is named in the Settlement Agreement and the recipient  
12 identifies how it will utilize the remaining funds to benefit absent Class Members. No  
13 stipulation for unclaimed/remaining settlement funds was made here. The Settlement  
14 Agreement merely provides, “The Court will decide in its sole discretion what to do  
15 with any monies remaining in the Settlement Fund after the distributions set forth in  
16 this Section are completed.” The Parties cannot simply “punt” the issue to the Court.  
17 Class Members deserve to know who will receive unclaimed funds, and how the funds  
18 will be used.  
19  
20

## 21 III. ATTORNEYS’ FEES 22

23 Class Counsel’s request for more than half of the total Settlement Fund is  
24 unreasonable and unfair to the Class. Class Counsel requests \$2,959,183 in fees plus  
25 \$2,299,510.21 in costs, which totals 53.3% of the \$9,863,945 settlement fund. Class  
26 Counsel has not demonstrated why it should receive a percentage of the settlement  
27 fund that is greater than the Ninth Circuit’s benchmark of 25%, especially considering  
28 the defects mentioned above. Further, the Court should significantly reduce or deny  
Class Counsel’s request for costs. If the Court denies Class Counsel’s costs, Class

1 Counsel would still net more than \$650,000. Class action attorneys should not be  
2 permitted to backdoor this Court's caselaw by packing millions of dollars in costs into  
3 its award request. The Class has no way to determine whether or not Class Counsel  
4 economized its costs, or if Class Counsel's costs were directly related to, and  
5 necessary to the prosecution of, this case. Class Counsel's request of more than \$2  
6 million in costs nearly equals its fee request, and the request represents more than half  
7 of the total funds that Class Members will receive (which is an estimated \$4.3 million).  
8 Worse, Class Counsel reserved the right to seek additional reimbursement of any such  
9 costs from the Settlement Fund in the event of an appeal, which would mean that  
10 Class Counsel could increase its windfall by hundreds of thousands of dollars at the  
11 expense of the Class. The Court should reduce Class Counsel's fee request and deny  
12 its request for costs. If so, the Court would increase Class Member benefits by more  
13 than 60%.

14  
15 This settlement agreement likely would not have been made but for Class  
16 Counsel's agreement to seek fees and costs exclusively from the Settlement Fund and  
17 not from EA (see Dkt. No. 584-01 at 16-17). Defendants likely conditioned  
18 settlement on the payment of fees and costs, which is inappropriate. The issue of  
19 attorneys' fees should not have played a role in settlement discussions. If they did,  
20 Class Counsel abdicated its duty to Class Members.

#### 21 22 IV. BURDENSOME OBJECTION REQUIREMENTS 23 24

25 The Parties have attempted to discourage and punish Class Members from  
26 speaking their mind and attempting to improve the Settlement. The objections stated  
27 above are intended to improve the Settlement and benefit the Class. The Parties,  
28 however, asked this Court to require objectors to: (1) state the name, court, and  
docket number of any class action litigation in which the objecting Settlement Class

Case 5:08-cv-00868-RMW Document 59-1 Filed 03/20/15 Page 5 of 6

1 Member and/or the Objector's attorney(s) help/indulge in the role as an objector or  
2 provided legal assistance with respect to an objection; and (2) make themselves  
3 available for deposition by Settlement Class Counsel and/or Defendant's Counsel  
4 between the time the objection is filed and the date of the Final Fairness Hearing.  
5 Further, the Objection must include two weekday non-holiday dates between seven  
6 and twenty-one days prior to the Final Fairness Hearing. Such requirements are  
7 unnecessary and unduly burdensome to Class Members. Providing information about  
8 unrelated cases and sitting for deposition does not help this Court evaluate settlement  
9 fairness. A written objection and a reply brief from Class and Defense Counsel is  
10 sufficient to protect the Class and this Court's interests.  
11

12  
13 Respectfully Submitted,

14  
15 Dated: 3-20-15

/s/Matthew Kurilich

16  
17 \_\_\_\_\_  
18 Matthew Kurilich

19 *Attorney for Objector*

20  
21  
22  
23 

24 \_\_\_\_\_  
25 Larry Ellis

26  
27 *Objector*  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record for each other party through the Court's electronic filing service on March 20, 2015.

/s/Matthew Kurilich  
Matthew Kurilich